

Report to the Los Angeles City Ethics Commission on
apparent violations of LAMC 49.5.5 by LAPD Detective
Kris Tu and LAPD Discovery Analyst Thanh Su

July 31, 2020

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¹Note that [blue text](#) indicates clickable links internal to this document whereas [dark green text](#) indicates clickable links to resources on the Internet.

1 Synopsis

1. LAPD Detective Kris Tu and LAPD Discovery Analyst Thanh Su handle requests for records made to LAPD via the California Public Records Act.
2. I requested copies of some electronic files from LAPD and Tu and Su falsely told me that most of the records were unavailable and that I would be required to pay for copies of the available ones.
3. LAPD routinely makes such files available to others for free and LAPD does in fact have copies of the files I requested.
4. These false statements and payment requirements create a private disadvantage to me compared to other requesters. The fact that both Tu and Su lied in the course of creating this disadvantage constitutes a misuse of their official positions and therefore a violation of LAMC 49.5.5.

2 Laws

5. The Los Angeles Municipal Code at §49.5.5(A) states in part that:

City officials, agency employees, ... shall not misuse or attempt to misuse their positions ... to create or attempt to create a private advantage or disadvantage, financial or otherwise, for any person.

6. The California Public Records Act² (“CPRA”) requires local government agencies to provide copies of records to any person on request.³ It requires copies of electronic records to be provided in electronic format⁴ and it allows agencies to charge no more than “the direct cost of producing a copy of a record in an electronic format.”⁵

3 Background

7. The Los Angeles Police Department uses a web-based public records platform called NextRequest to handle its CPRA compliance.
8. This platform allows LAPD to upload electronic files, which are then available for download at no cost by the original requester or any member of the public.
9. Detective Kris Tu (LAPD Serial Number 34895) is assigned to the LAPD Discovery Unit, which handles LAPD’s CPRA requests.
10. Analyst Thanh Su (LAPD Serial Number N6233) is a civilian employee of the LAPD Discovery unit and works on CPRA requests.

² California Government Code §6250 et seq.

³ At §6253.

⁴ At §6253.9.

⁵ At §6253.9

4 Facts

4.1 The CPRA request

11. On July 7, 2020 I submitted a request for records to LAPD using NextRequest, assigned number 20-4427, asking for “Audio files for all ‘Our LAPD Story’ podcasts.” This request is available on the web at <https://lacity.nextrequest.com/requests/20-4427>, although it presently requires permission to view. A copy of the request also appears below as [Exhibit 1](#).
12. On July 9 LAPD responded anonymously with a link to the Department’s Buzzsprout page. Buzzsprout is a podcast hosting platform that allows listening but not file download. The link is <https://www.buzzsprout.com/203568/>.
13. I told LAPD that I needed copies of the actual files as required by the CPRA. Kris Tu responded by telling me to list the specific files I wanted and per the CPRA at §6253.9 he would prepare an invoice for the cost of duplication. I told him that I wanted all of them as I had previously stated.
14. On July 30, 2020 Thanh Su told me that the department did not retain copies of the podcast files because they are so large but that they had located two of them.
15. At this time Su also told me:

The Department does not have the technical capability to download the podcast episode audio files from its podcast hosting page, as it lacks the necessary special software to do so.

16. At this time Su told me that I would be required to pay the Department \$5 for a compact disk and mailing costs if I wanted to obtain copies of these two files. Su stated that this was “the direct cost of copying” contemplated by the CPRA at §6253.9

4.2 NextRequest’s capabilities and LAPD’s usual practice

17. According to its website at <https://www.nextrequest.com/>, NextRequest is an “All-in-one records request platform.”
18. According to its advertised list of features, found at <https://www.nextrequest.com/features>, NextRequest can handle files “of any type or size” for production to requesters.
19. LAPD uses NextRequest to provide extremely large files to requesters at no charge. For instance in response to [Request #20-4337](#), opened on July 2, 2020, LAPD uploaded a 298MB video file and a 58MB video file. As of this moment both these very large files are available for free download by anyone with a web browser.

4.3 Buzzsprout

20. According to its website at <https://www.buzzsprout.com/>, Buzzsprout is a free podcast hosting platform.
21. According to Buzzsprout’s user instructions at <https://www.buzzsprout.com/help/20-media-file-url> accountholders can obtain copies of their own podcasts in three distinct ways. Direct download links are available from the control panel, download links are emailed to accountholders when podcasts are uploaded, or download links can be created from a pattern by accountholders.
22. It is not possible for anyone but accountholders to download podcast files from Buzzsprout.

5 Conclusions

23. Thanh Su’s statement⁶ that LAPD does not retain copies of its podcasts is false. LAPD retains copies on the Buzzsprout platform.⁷
24. Thanh Su’s statement⁸ that LAPD doesn’t have the technical capability or software to download the files from the website is false. All that’s needed is a web browser and a Buzzsprout account,⁹ both of which LAPD has.
25. The NextRequest platform can host files of any size¹⁰ and LAPD uses it to host files of at least 298MB and publish them for download at no cost to anyone.¹¹
26. Thanh Su’s statement that five dollars is “the direct cost of copying”¹² the record is false. LAPD routinely makes extremely large files available at no cost.¹³
27. Kris Tu is Su’s supervisor and is aware of and responsible for Su’s false statements. Furthermore Tu’s statement that he would invoice me for the costs of duplication¹⁴ suggests that he is responsible for LAPD’s plan to charge me for access to records.
28. LAPD’s insistence on charging me \$5 to receive records by postal mail while making records identical in every salient aspect available to other requesters at no charge for immediate download creates a private disadvantage for me in two distinct ways. First, by requiring me to pay money for a service that LAPD provides to other members of the public for free. Second, by delaying my access to these records by requiring

⁶ See Paragraph 14.

⁷ See Paragraph 21.

⁸ See Paragraph 15.

⁹ See Paragraph 21.

¹⁰ See Paragraph 18.

¹¹ See Paragraph 19.

¹² See Paragraph 16.

¹³ See Paragraph 19.

¹⁴ See Paragraph 13.

transfer via postal mail while making them immediately available to other members of the public.

29. Lying to members of the public about LAPD's technical capabilities with respect to records production is a misuse of position.
30. Tolerating such behavior in one's subordinates is a misuse of position.
31. Both Tu and Su have misused their official positions to create a private disadvantage for me.

6 Requested action

32. I ask that the Ethics Commission investigate this matter and impose appropriate consequences on Tu and Su.

7 Exhibits

7.1 Exhibit 1 – CPRA Request 20-4427

< Request #20-4427 >

CLOSED

Audio files for all "Our LAPD Story" podcasts.

Received July 7, 2020 via web

Departments Police Department (LAPD)

Requester Calan Reeren
calan_reeren@foutu.org
Los Angeles, CA 90011

Documents

Public (none)

Requester (none)

Staff

Point of Contact LAPD Analyst Thanh N6233

External Message [Hide](#)

Requester + Staff

Good afternoon, Detective Tu.

Recently your subordinate made the following statement with respect to request 20-4427:

"The Department does not have the technical capability to download the podcast episode audio files from its podcast hosting page, as it lacks the necessary special software to do so."

Note first that this sentence consists of pure statements of fact. It does not include any opinions, legal or otherwise. These statements, separated and numbered for convenience, are:

1. The Department does not have the technical capability to download the podcast episode audio files from its podcast hosting page
2. special software is necessary to [accomplish #1]

I'm writing to confirm that you, in your capacity as a sworn officer of the LAPD and supervisor of the analyst who made these claims, stand by their truth. If you do I hope you will tell me so. If you do not I hope you will correct them with respect to my request.

Your analyst also made the following statement:

"Please note that, due to the large file size of the podcast episodes, the Department typically does not retain separate copies of the audio files on its computers, system, or external media (such as compact discs or thumb drives)"

This isn't a pure statement of fact, not least due to the inclusion of the word "typically," but it does nevertheless suggest a factual statement, which would be that LAPD does not possess either factually or constructively copies of these files other than the two listed in the response. Is this the case? LAPD does not possess these files and does not control a location where the files are stored? If so, please confirm. If not, please correct.

Also, the list of places where LAPD doesn't have these files conspicuously omits cloud storage. Can you confirm or deny that copies exist on cloud storage?

Furthermore, the legal standard for production doesn't rely on LAPD's possession, but the possession of the City of Los Angeles. Does the City have these files or not? You're certainly required to answer this question per the CPRA-mandated duty to assist me in overcoming practical obstacles to access.

Thanks,

A.

July 30, 2020, 4:16pm by the requester

External Message [Hide](#)

Requester + Staff

OMG LAPD!!!! Your Buzzsprout account comes with the ability to download your files straight from the website without the hyperspecialized advanced software you don't have!!!! Here are the instructions straight from Buzzsprout!!!

<https://www.buzzsprout.com/help/20-media-file-url>

You can DL them all and then UL them to the platform and you'll have the pleasure of not breaking the law some more and I'll have the files!!

July 30, 2020, 3:02pm by the requester

External Message

Requester + Staff

Don't be silly, please. Upload them to this platform at no charge. Or if you're in the mood to continue to play games, explain why you won't upload them to this platform.

July 30, 2020, 2:58pm by the requester

External Message [Hide](#)

Public

Dear Requester,

External Message Hide Public

Dear Requester,

This correspondence concerns your CPRA Request, No. 20-4427, to the Los Angeles Police Department (Department), originally submitted on July 7, 2020, which sought "audio files for all 'Our LAPD Story' podcasts." On July 9, 2020, the Department responded to your request by providing you with a link to the 'Our LAPD Story' podcast on the Department's web site (http://www.lapdonline.org/videos_podcasts), as well as a link to the Department's podcast hosting and publishing page, which is located at <https://www.buzzsprout.com/203568>, and which contains all episodes of the 'Our LAPD Story' podcast. On July 9, 2020, in response to the Department's message, you stated that you knew how to listen to the podcast and that you were seeking "copies of the files" of the podcast episodes.

The Department has conducted a search for audio files containing the 'Our LAPD Story' podcast episodes, and has identified two audio files in its possession, for the April 13, 2020 and June 30, 2020 podcast episodes. Please note that, due to the large file size of the podcast episodes, the Department typically does not retain separate copies of the audio files on its computers, system, or external media (such as compact discs or thumb drives), but rather uploads the audio files onto its podcast hosting and publishing page at <https://www.buzzsprout.com/203568>. The Department does not have the technical capability to download the podcast episode audio files from its podcast hosting page, as it lacks the necessary special software to do so. Pursuant to Government Code Section 6255, it would be unduly burdensome for the Department to procure such software for the purpose of downloading all of the podcast audio files onto a compact disc, when the podcast episodes are readily available online on buzzsprout.com, as well as on multiple streaming services and podcast applications.

The Department can provide you with a copy of the April 13, 2020 and June 30, 2020 audio files by placing them on a compact disc, which can be made available to you via U.S. Mail or for in-person pick-up upon a payment of a fee of Five Dollars (\$5.00), which represents the direct cost of producing copies of the audio files on a compact disc. See Govt. Code § 6253(b); Govt. Code § 6253(1)(2) (noting that the "cost of duplication" for electronic records "shall be limited to the direct cost of producing a copy of a record in an electronic format"); *Rubio v. Super. Ct.*, 244 Cal.App.4th 459, 466, 483, 487 (2016) (holding that costs of copying electronic records includes the cost of the compact disc onto which the records are placed).

You can send the payment to or pick up the record at Los Angeles Police Department - Discovery Section, 200 North Spring Street, 19th Floor, Los Angeles, CA 90012. The Department will provide the disc to you upon receipt of payment. Please let us know if you would like us to mail the disc to you (and, if so, to what address) or if you would prefer to pick it up.

Respectfully,

LAPD Discovery Section CPRA Unit

July 30, 2020, 2:54pm by LAPD Analyst Thanh [N6233](#) (Staff)

External Message Hide Public

You're confusing making records available for inspection with providing a link. The CPRA at section 6253(f) allows you to provide a link to a file on your website in lieu of on-premises inspection. You have not provided a link to a file on your website. You've provided links to proprietary streaming services which do not allow direct access to the files.

In any case, as I said, I want all of them. There's no need for an invoice since, as you say in your quotation, you're only allowed to charge for direct costs of duplication which, for electronic files, is nothing.

July 9, 2020, 2:36pm by the requester

External Message Hide Public

Dear Requester,

Thank you for your response.

Government Code (GC) Section 6253(a) requires the Department to make public records open to inspection at all times during the office hours of the Department and gives a member of the public the right to inspect those public records.

We have provided you with a link with which you are able to access

	External Message I know how to listen to them. I want copies of the files per the CPRA at 6253(f). Please reopen this request and make copies of the files available immediately. Was this somehow not clear from my request for "files"?	Public
	July 9, 2020, 11:38am by the requester	
	Request Closed Hide	Public
	<p>Dear Requester:</p> <p>We reviewed your request dated July 7, 2020 for "audio files for all "Our LAPD Story" podcasts".</p> <p>Your request was made under the California Public Records Act (the Act). The Department is cognizant of its responsibilities under the Act. It recognizes the statutory scheme was enacted to maximize citizen access to the workings of government. The Act does not mandate disclosure of all documents within the government's possession. Rather, by specific exemption and reference to other statutes, the Act recognizes that there are boundaries where the public's right to access must be balanced against such weighty considerations as the right of privacy, a right of constitutional dimension under California Constitution, Article 1, Section 1. The law also exempts from disclosure records that are privileged or confidential or otherwise exempt under either express provisions of the Act or pursuant to applicable federal or state law, per California Government Code Sections 6254(b); 6254(c); 6254(f); 6254(k); and 6255.</p> <p>All episodes of the Department's "Our LAPD Story" podcast can be accessed through the websites listed below. Select an episode to enjoy the podcast.</p> <p>http://www.lapdonline.org/videos_podcasts https://www.buzzsprout.com/203568/</p> <p>If you have any questions, please respond to this email.</p> <p>Respectfully,</p> <p>LAPD Discovery Section, CPRA Unit</p> <p>July 9, 2020, 11:28am</p>	
	Request Published	Public
	July 9, 2020, 11:28am	
	External Message Hide	Public
	<p>Dear Requester:</p> <p>The Department continues to process CPRA requests as they come in during the COVID-19 public health crisis, and will endeavor to do so in a timely manner. While the Department will be making every effort to comply with its statutory obligations, due to the COVID-19 crisis and the City and Department's efforts to tackle its effects, the actual production of records responsive to your request (if any) may be delayed if Department resources are needed to perform critical functions or are constrained due to the pandemic. The Department greatly appreciates your patience during this difficult time, as the entire community and nation deals with this unusual and serious situation. During this crisis, the Department would also ask that requesters consider postponing the submission of any requests that can wait until after the immediate crisis has abated.</p> <p>If you have any questions, please respond to this e-mail.</p> <p>Respectfully,</p> <p>LAPD Discovery Section, CPRA Unit</p> <p>July 7, 2020, 2:19pm by LAPD Michelle N6335, Senior Administrative Clerk (Staff)</p>	
	Department Assignment	Public
	Police Department (LAPD)	
	July 7, 2020, 11:35am	
	Request Opened	Public
	Request received via web	
	July 7, 2020, 11:35am	

7.2 Exhibit 2 – Buzzsprout file download instructions

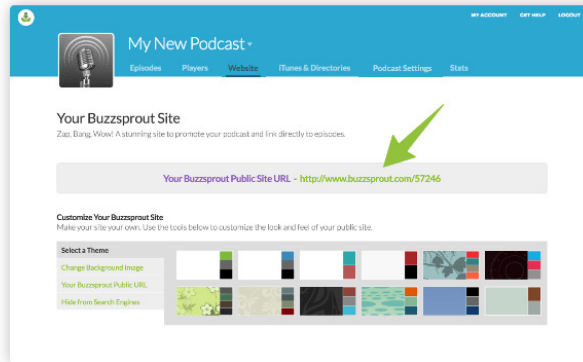
Embedding

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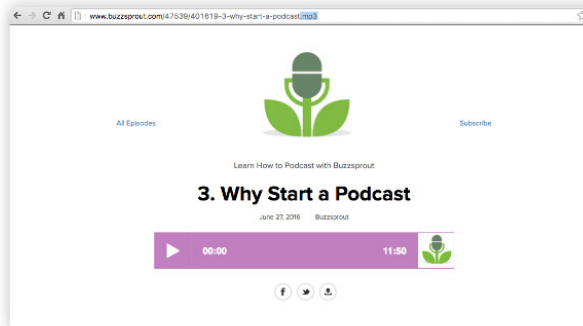
Episode Direct Download Link

Usually a player will ask you for your Media file URL. This is a direct link to your media file for download. The process for getting this direct download link is very simple.

1. Go to the **Website** page
2. Click on your **Buzzsprout Website URL**



3. Next go to a to your **Episodes** page and click into the individual episode
4. Copy the URL and add **.mp3** to the end



In the example above, the url is “www.buzzsprout.com/47539/401619-3-why-start-a-podcast”

This would be the direct download: www.buzzsprout.com/47539/401619-3-why-start-a-podcast.mp3

Note: This is just one way to get your media url, it's also given in your “Episode is Live” email and in your individual episode details page under Email or Embed this Episode

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